

Senate Bill 94  
Wednesday, January 14, 2009  
Presented by Bill Schenk  
Natural Resources Committee

Mr. Chairman and committee members, for the record I am Bill Schenk, Legal Counsel of Montana Department of Fish, Wildlife & Parks (FWP).

The Department of Fish Wildlife and Parks supports Senate Bill 94 - overall. However, FWP takes no position on most of this bill. That is because most of the statutory changes proposed by this bill go to refining technical aspects of hydrogeologic assessments, aquifer recharge plans and mitigation plans. I believe these proposed changes are based on DNRC's experience in working with applicants and reviewing such plans over the last year and half, and I trust that they are good proposals.

FWP supports two specific additions to 85-2-362 that are contained in the bill. This bill would make it clear that a mitigation or aquifer recharge plan may not include the proposed elimination of vegetation that uses water as a way to offset withdrawals from the aquifer. Elimination of cottonwood trees and the like has potentially harmful effects on wildlife and fisheries. Similarly, the bill would prohibit an applicant from counting runoff that results from newly paved parking lots, and rooftops toward mitigation.

FWP views the rest of this bill as a statutory cleanup, but I would offer one caution. The bill would exempt nonconsumptive uses of ground water from the requirement to perform hydrogeologic assessments. The definition of "nonconsumptive" has a history of debate. I would encourage an amendment that defines "nonconsumptive use" for purposes of 85-2-360 as a use that returns 100% of the water to the same aquifer in approximately the same location, such as a ground source heat pump.

Thank you.